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| i2 TECHNOLOGIES US, INC. ONE i2 PLACE, 11701 LUNA ROAD DALLAS, TX 75234 | | | APPLE, KIRSTEN SACHWITZ | |
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| | | | 3628 | |

DATE MAILED: 01/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 09/548,466 | Applicant(s) DALEL ET AL. | |
| | Examiner Kirsten S. Apple | Art Unit 3628 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-94 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-94 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

By

Claim Rejections - 35 USC § 103

The Examiner has read and reviewed all of the information provided by the Applicant. The examiner rejects as final claims 1-93 under 35 USC 103.

The Applicant attention is re-drawn to the following:

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 5-7, 11, 15, 16, 19-21, 25, 29-32, 35-37, 41, 42, 45, 46, 49-51, 55, 56, 63, 64, 67-69, 73, 74, 78, 79, 82-84, 88, 89, and 91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt et al. (EP 0770 967) (hereafter Schmidt), in view of Herz et al. (US Patent No. 5,754,938) (hereafter Herz) AND Dr. Pattie Maes et al. , "AGENTS THAT BUY AND SELL", Communications of the ACM, March 1999, Vol. 42, No. 3 (hereafter Maes).

Claims 1 and 15; Schmidt discloses a method of supply chain activity optimization involving multiple enterprises at a buyer and seller computers, comprising:

accessing a forecasted demand for at least one item (SEE Schmidt Page 3, line 25-page 4, line 8);

generating one or more proposed flexible trade contracts using the forecasted demand for the item (SEE Schmidt Page 28, lines 35-40);

communicating each proposed flexible trade contract to a seller computer (SEE Schmidt "...generates replenishment ...report...", page 20, line 50-page 30, line 41); and
executing a flexible trade contract created after acceptance of the proposed flexible trade

contract at -the seller computer (SEE Schmidt "...the execution started...", Page 30, line 43-
page 32, line 38}.

Schmidt also disclose "receiving modification of the contracts", "proposed flexible trade contracts", "created a flexible trade contract" (SEE Schmidt Page 30, lines 1923), "evaluating a modified contract" (SEE Schmidt Page 28, line 39, and page 30, line 20), and "redefinition of requirements of the contract" (SEE Schmidt Page 28, line 46), as well as "price discounts" in the framework of a negotiation (SEE Schmidt Page 51, line 55).

However, Schmidt does not explicitly disclose that those steps are made "automatically and without user input", i.e. steps are conducted automatically by the seller computer and the buyer computer.

However, Herz discloses the automatic negotiation between computers, i.e. "automatically and without user input" (SEE Herz Col. 61, lines 18-49 "A further use of the capabilities of this system is to manage a user's investment portfolio." . . . "The user's past investment behavior is characterized in the user's search profile set. or target profile interest summary, and this information is used to match the user with stock opportunities (target objects) similar in nature to past investments." . . . "Furthermore, the user can set filter parameters so that the system can monitor stock prices and automatically take certain actions, such as placing buy or sell orders, or paging the user with a notification, when certain stock performance characteristics are met." . . . "Thus, the system can immediately notify the user when a selected stock reaches a predetermined price, without the user having to monitor the stock market activity").

Maes teaches; "Software agent technologies can be used to automate several of the most time-consuming stages of the buying process"... "In other markets such as **stocks**, automobiles, and **fine art**), the negotiation of price and other aspects to the buying are

integral to the buying process"....."In automated negotiation, computational agents find and prepare **contracts** on behalf of the real-world parties they represent. This automation saves human negotiation time, and computational agents are often better at finding deals in combinatorially and strategically complex settings. . . .When different users have different preferences, automated negotiation can rapidly find solutions that improve the utility for all parties" . . ." Kabah's agents automate much of the merchant-brokering and negotiation stages for both buyers and sellers".

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to allow sellers computer and the buyer computer in Schmidt to automatically and without user input negotiate the contract, which would also include any updated versions. One would have been motivated to including the automatic negotiation of the contracts between the seller computer and the buyer computer in order to reduce the cost of the procurement units as well as to reduce the time needed to obtain the items.

Claims 2 and 16: Schmidt | Herz | Maes disclose the methods of Claims 1 and 15. Schmidt also explicitly discloses wherein each proposed flexible trade contract is selected from the group consisting of a forward contract, an option contract, and a flexible forward contract {SEE Schmidt option contract, Page 28, lines 35-40}.

Claim 5 and 19: Schmidt | Herz | Maes disclose the methods of Claims 2 and 16. Schmidt also discloses wherein each option contract comprises an option, the option comprising at least one parameter selected from the group consisting of a maximum quantity of the item that a seller is obligated to supply; a maximum number of item types that the seller is obligated to supply; and a maximum number of locations where the item must be provided (SEE Schmidt Page 81, lines 4-19, "...maximal inventory...").

Claims 6 and 20: Schmidt I Herz I Maes disclose the method of Claims 5 and 19. Schmidt also discloses wherein each option contract comprises a unit option contract, and wherein the parameter is selected from the group consisting of a maximum of one unit of the item; a maximum of one item type; and a maximum of one location (SEE Schmidt Page 81, lines 20-33).

Claim 7 and 21: Schmidt I Herz I Maes disclose the methods of Claims 5 and 19. Schmidt also discloses wherein each option contract comprises an exercise period after the execution of the option contract during which a buyer must exercise the option (SEE Schmidt Page 81, line 34-page 82, line 32).

Claims 11 and 25: Schmidt I Herz I Maes disclose the methods of Claims 1 and 15. Schmidt also discloses: receiving an alternate contract term from the seller computer (SEE Schmidt Page 50, lines 45-57); accepting the alternate contract term without user input if the alternate contract term falls within a range of acceptable contract terms (SEE Schmidt Page 50, lines 58-60); and identifying the alternate contract term as requiring user input if the alternate contract term falls outside the range of acceptable contract terms (SEE Schmidt Page 50, line 60- Page 51, line 15). However, Schmidt does not explicitly disclose that those steps are made "automatically and without user input, i.e. steps are conducted automatically by the seller computer and the buyer computer.

Herz discloses the automatic negotiation between computers, i.e. "automatically and without user input" (SEE Herz Col. 61, lines 18-49). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to allow sellers computer and the buyer computer in Schmidt to automatically and without user input negotiate the contract , which would also include any updated versions. One would have been motivated to including the automatic negotiation of the contracts between the seller

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computer and the buyer computer in order to reduce the cost of the procurement units as well as to reduce the time needed to obtain the items.

Claims 29, 45, 63, 58, and 78: Schmidt I Herz I Maes discloses a supply manager for supply chain activity optimization involving multiple enterprises, comprising:

- a) a negotiation module operable to receive one or more proposed flexible trade contracts from a buyer computer (SEE Schmidt Page 3, line 26 - Page 4, line 8; Page 28, line 35 - Page 31, line 37, lines 39 - 44);
- b) each proposed flexible trade contract reflecting a buyer's forecasted demand for at least one item (SEE Schmidt Page 3, line 26 - Page 4, line 8; Page 28, line 35 - Page 31, line 37, lines 39 - 44);
- c) the negotiation module also operable to accept the proposed flexible trade contract to create a flexible trade contract (SEE Schmidt Page 3, line 26 - Page 4, line 8; Page 28, line 35 - Page 31, line 37, lines 39 - 44); and
- d) an execution module operable to execute the flexible trade contract (SEE Schmidt Page 3, line 26 - Page 4, line 8; Page 28, line 35 - Page 31, line 37, lines 39-44).

However, Schmidt does not explicitly disclose that those steps are made "automatically and without user input", i.e. steps are conducted automatically by the seller computer and the buyer computer.

However, Herz discloses the automatic negotiation between computers, i.e. "automatically and without user input" (SEE Herz Col. 61, lines 18-49 "A further use of the capabilities of this system is to manage a user's investment portfolio." . . . "The user's past investment behavior is characterized in the user's search profile set or target profile interest summary, and this information is used to match the user with stock opportunities (target objects) similar in nature to past investments." . . . "Furthermore, the user can set filter

parameters so that the system can monitor stock prices and automatically take certain actions, such as placing buy or sell orders, or paging the user with a notification, when certain stock performance characteristics are met." . . . "Thus, the system can immediately notify the user when a selected stock reaches a predetermined price, without the user having to monitor the stock market activity").

Maes teaches; "**Software** agent technologies can be used to automate several of the most time-consuming stages of the buying process"... "In other markets such as **stocks**, automobiles, and **fine art**), the negotiation of price and other aspects to the buying are integral to the buying process"..... "In automated negotiation, computational agents find and prepare **contracts** on behalf of the real-world parties they represent. This automation saves human negotiation time, and computational agents are often better at finding deals in combinatorially and strategically complex settings. . . . When different users have different preferences, automated negotiation can rapidly find solutions that improve the utility for all parties" . . . " Kabah's agents automate much of the merchant-brokering and negotiation stages for both buyers and sellers".

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to allow sellers computer and the buyer computer in Schmidt to automatically and without user input negotiate the contract, which would also include any updated versions. One would have been motivated to including the automatic negotiation of the contracts between the seller computer and the buyer computer in order to reduce the cost of the procurement units as well as to reduce the time needed to obtain the items.

Claims 30: Schmidt I Herz I Maes disclose a procurement -manager for multi-enterprise optimization, comprising: a negotiation module operable to receive a forecasted demand for at least one item (See Schmidt Page 3; line 25-page 4, line 8)

Claim 31: Schmidt I Herz I Maes disclose the method of procurement of Claim 29. Schmidt also discloses wherein the negotiation module receives the forecasted demand from a user, and a forecast module operable to determine the forecasted demand (SEE Schmidt Page 82, line 11-page 83, line 20, and page 84, line 21-page 87, line 50).

Claims 32, 46, 64, and 79: Schmidt I Herz I Maes disclose the methods of procurement of Claims 29, 45, 63, and 78. Schmidt also discloses wherein each proposed flexible trade contract is selected from the group consisting of a forward contract, an option contract, and a flexible forward contract (SEE Schmidt Page 28, lines 35-40).

Claims 35, 49, 67, and 82: Schmidt I Herz I Maes disclose the method of procurement of Claims 32, 46, 64, and 79. Schmidt also discloses wherein each option contract comprises an option, the option comprising at least one parameter selected from the group consisting of a maximum quantity of the item that a seller is obligated to supply; a maximum number of item types that the seller is obligated to supply; and a maximum number of locations where the item must be provided (SEE Schmidt Page 81, lines 4-19, "maximal inventory" }.

Claims 36, 50, 68, and 83: Schmidt I Herz I Maes disclose the method of Claims 35, 49, 67, and 82. Schmidt also discloses wherein each option contract comprises a unit option contract, and wherein the parameter is selected from the group consisting of a maximum of one unit of the item; a maximum of one item type; and a maximum of one location { SEE Schmidt Page 81, lines 20-33).

Claims 37, 51, 69, and 84: Schmidt I Herz I Maes disclose the method of Claims 35, 49, 67, and 82. Schmidt also discloses wherein each option contract comprises an exercise period after the execution of the option contract during which a buyer must exercise the option (SEE Schmidt Page 81, line 34-page 82, line 32):

Claims 41 and 42: Schmidt / Herz / Maes disclose the procurement of Claims 29 and 45. Schmidt also discloses: receiving an alternate contract term from the seller computer (SEE Schmidt page 50, lines 45-57); accepting the alternate contract term without user input if the alternate contract term falls within a range of acceptable contract terms (SEE Schmidt page 50, lines 58-60); and identifying the alternate contract term as requiring user input if the alternate contract term falls outside the range of acceptable contract terms (SEE Schmidt page 50, line 60-col. 51, line 15).

Claims 55, 56, 73, 74, 88, and 89: Schmidt I Herz I Maes disclose the procurement of Claims 29, 45, 63, and 78. Schmidt also discloses: receiving an alternate contract term from the seller computer (SEE Schmidt Page 50, lines 45-57); accepting the alternate contract term without user input if the alternate contract term falls within a range of acceptable contract terms (SEE Schmidt Page 50, lines 58-60); and identifying the alternate contract term as requiring user input if the alternate contract term falls outside the range of acceptable contract terms (SEE Schmidt Page 50, line 60-col. 51, line 15). However, Schmidt does not explicitly disclose that those steps are made "automatically and without user input", i.e. steps are conducted automatically by the seller computer and the buyer computer.

Herz discloses the automatic negotiation between computers, i.e. "automatically and without user input" SEE Herz Col. 61, lines 18-49). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to allow sellers computer and the buyer computer in Schmidt to automatically and without user input negotiate the contract, which would also include any updated versions. One would have been motivated to including the automatic negotiation of the contracts between the seller computer and the buyer computer in order to reduce the cost of the procurement units as well as to reduce the time needed to obtain the items.

Claim 91: Schmidt I Herz I Maes anticipates the software of Claim 78, However, the references do not explicitly disclose wherein receiving one or more proposed flexible trade contracts from the buyer computer system comprises receiving one or more proposed flexible trade contracts from the buyer computer system through an intermediary. Official notice is taken that the step to negotiate through an intermediary is all and well known within the art. Therefore, it would have been obvious to use the service of an intermediary in the Schmidt I Herz I Maes invention. One would have been motivated to use the service of an intermediary, i.e. a broker, in order to guarantee the anonymity of the operators-, and or a high standard of professionalism in the real estate operations, where there are different roles and issues in the different cities, such as "sponsorization" in a new condo building in New York city, etc.

3. Claims 3, 4, 8-10, 12-14, 17, 18, 22-24, 26-28, 33, 34, 38-40, 43, 44, 47, 48, 5254, 57-62, 65, 66, 70-72, 75-77, 80, 81, 85-87, 90, and 92-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt et al. (EP 0770 967) (hereafter Schmidt) in view of Herz et al. (US Patent No. 5,754,938) (hereafter Herz) AND Dr. Pattie Maes et al. , "AGENTS THAT BUY AND SELL", Communications of the ACM, March 1999, Vol. 42, No. 3 (hereafter Maes), and further view of Shepherd (U.S. Patent No. 5,970,479).

Claims 3 and 17: Schmidt I Herz I Maes disclose the method of Claims 2 and 16. However, the references do not explicitly disclose wherein each forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply. Shepherd discloses such as a step (SEE Shepherd Col. 2, lines 28-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt I Herz I Maes method. One would have been motivated to use such a forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply in order to minimize the risk.

Claims 4 and 18: Schmidt I Herz I Maes I Shepherd disclose the method of Claims 3 and 17. However, Schmidt does not explicitly disclose wherein each forward contract comprises a unit forward contract, and wherein the buyer is obligated to purchase and the seller is obligated to supply a quantity of one unit of the item. Shepherd discloses such as a step (SEE Shepherd Col. 2, lines 28-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt I Herz I Maes method. One would have been motivated to use such a forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply in order to minimize the risk.

Claims 8 and 22: Schmidt I Herz I Maes I Shepherd disclose the method of Claims 2 and 16 above. Shepherd discloses wherein each flexible forward contract comprises a total quantity of one or more items that a buyer is obligated to purchase and a seller is obligated to supply; and a plurality of subcontracts each comprising an option, each option comprising at least one parameter selected from the group consisting of a range of quantities for one item; a range of quantities for one item type; and a range of quantities for one location where the item must be provided (SEE Shepherd Col. 49, lines 27-40 and col. 50, lines 10-27). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt I Herz I Maes I Shepherd method. One would have been motivated to use such a step in order to minimize the risk.

Claims 9 and 23: Schmidt I Herz I Maes I Shepherd disclose the method of Claims 8 and 22 above. Shepherd discloses wherein each flexible forward contract comprises a unit flexible forward contract, and wherein the total quantity is one unit and the parameter is selected from the group consisting of a range of zero to one unit for the item; a range of zero

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to one unit for the item type; and a range of zero to one unit for the location (SEE Shepherd Col. 55, lines 60-64). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt I Herz I Maes I Shepherd method. One would have been motivated to use such a step in order to minimize the risk.

Claims 10 and 24: Schmidt I Herz I Maes I Shepherd disclose the method of Claims 8 and 22 above. Shepherd discloses wherein each flexible forward contract comprises an exercise period after the execution of the flexible forward contract during which the, buyer must exercise the option (SEE Shepherd Col. 55, line 65-col. 56, line 7). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt/Herz/Maes/Shepherd method. One would have been motivated to use such a step in order to minimize the risk.

Claims 12 and 26: Schmidt I Herz I Maes disclose the method of Claims 1 and 15. However, the references do not explicitly disclose updating the forecasted demand for the item; and exercising an option in the flexible trade contract based on the updated forecasted demand. Shepherd discloses such steps (SEE Shepherd Col. 55, lines 60-64). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such steps in the Schmidt I Herz I Maes method. One would have been motivated to use such a step in order to minimize the risk.

Claims 13, 14, 27, 28, 44, 58, 75 and 76: Schmidt I Herz I Maes disclose the method of Claims 1, 15, 29, 45 and 63. However, Schmidt does not explicitly disclose calculating a penalty if a seller fails to comply with a term of the flexible trade contract nor wherein communicating each proposed flexible trade contract to the seller computer comprises communicating each proposed flexible trade contract to the seller computer through an

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intermediary. Shepherd discloses such steps (SEE Shepherd Col. 55, line 65-col. 56, line 7). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such steps in the Schmidt method. One would have been motivated to use such a step in order to minimize the risk.

Claims 33, 47, 65, and 80: Schmidt I Herz I Maes disclose the method of procurement of Claims 32, 46, 64, and 79. However, the reference does not explicitly disclose wherein each forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply. Shepherd discloses such as a step (SEE Shepherd Col. 2, lines 28-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt I Herz I Maes method. One would have been motivated, to use such a forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply in order to minimize the risk.

Claims 34, 48, 66, and 81: Schmidt I Herz I Maes I Shepherd disclose the method of procurement of Claims 33, 47, 65, and 80. Schmidt also discloses wherein each forward contract comprises a unit forward contract, and wherein the buyer is obligated to purchase and the seller is obligated to supply a quantity of one unit of the item (SEE Schmidt Page 81, lines 20-33).

Claims 38, 52, 70, and 85: Schmidt I Herz I Maes disclose the method of Claims 32, 46, 64, and 79. Schmidt also discloses wherein each flexible forward contract comprises a total quantity of one or more items that a buyer is obligated to purchase and a seller is obligated to supply; a range of quantities for one item; a range of quantities for one item type; and a range of quantities for one location where the item must be provided (SEE Schmidt page 96, lines 15-27). However, Schmidt does not explicitly disclose a plurality

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of subcontracts each comprising an option, each option comprising at least one parameter.

Shepherd discloses such as a step (SEE Shepherd Col. 49, lines 27-col. 50, line 27).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt/Herz method.

Claims 39, 53, 71, and 86: Schmidt I Herz I Maes I Shepherd disclose the procurement manager of Claims 38, 52, 70, and 85. Schmidt also discloses wherein each flexible forward contract comprises a unit flexible forward contract, and wherein the total quantity is one unit and the parameter is selected from the group consisting of a range of zero to one unit for the item; a range of zero to one unit for the item type; and a range of zero to one unit for the location (SEE Schmidt Page 66, line 18-page 67, line 50).

Claims 40, 54, 72, and 87: Schmidt I Herz I Maes I Shepherd- disclose the procurement manager of Claims 38, 52, 70, and 85. Schmidt also discloses wherein each option contract comprises an exercise period after the execution of the option contract during which a buyer must exercise the option (SEE Schmidt Page 81, line 34 page 82, line 32)..

Claims 43, 57, and 90: Schmidt I Herz I Maes disclose the method and software of procurement of Claims 29, 45, 63, 78. However, the references does not explicitly disclose tracking module operable to calculate a penalty if a seller fails to comply with a term of the flexible trade contract nor a tracking module operable to calculate a penalty if a seller fails to comply with a term of the flexible trade contract. Shepherd discloses such steps (SEE Shepherd Col. 55, line 65co1. 56, line 7). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such steps in the Schmidt/Herz/Maes method. One would have been motivated to use such a step in order to minimize the risk.

Claims 59, 60, 61, 62, 77, and 92: Schmidt / Herz / Maes / Shepherd disclose the methods and software of procurement of Claims 1, 15, 29, 45, 63, and 79. Herz also discloses a negotiation, communicating with the seller computer system in a series of rounds in which the buyer computer system and the seller computer system successively propose one or more counter-modifications of the proposed flexible trade contract for automatic evaluation and possible acceptance to create the flexible trade contract (SEE Herz "...Automatically take certain actions...", means the capability to participate in more of one round of the negotiation, Col. 61, lines 19-50). Therefore, it would have been obvious to one having ordinary skill in the art in the time the invention was made to utilize such as a step in the Schmidt I Herz I Maes I Shepherd invention. One would be motivated to include such as a step in order to facilitate the quickly conclusion of the negotiation,

Claim 93: Schmidt / Herz / Maes / Shepherd disclose a system for supply chain activity optimization involving multiple enterprises at a buyer computer system, comprising:
means for accessing a forecasted demand for at least one item; automatically and without user input subsequent to accessing the forecasted demand, generating one or more proposed flexible trade contracts using the forecasted demand for the item;
means for, automatically and without user input subsequent to generating the proposed flexible trade contracts, communicating each proposed flexible trade contract to a seller computer system to initiate an automatic collaborative negotiation over the proposed flexible trade contract with the seller computer system;
means for, automatically and without user input subsequent to communicating the proposed flexible trade contract, as part of the automatic collaborative negotiation, receiving at least one modification of the proposed flexible trade contract from the seller computer system for

automatic evaluation and possible acceptance in response to communicating the proposed flexible trade contract;

means for, automatically and without user input subsequent to receiving the modification of the proposed flexible trade contract from the seller computer system, as part of the automatic collaborative negotiation, evaluating the modification to determine whether the modification is acceptable;

means for, automatically and without user input subsequent to evaluating the modification of the proposed flexible trade contract, as part of the automatic collaborative negotiation, accepting the modification if the modification is acceptable; and means for, subsequent to execution of a flexible trade contract created based on the proposed flexible trade contract as a result of the automatic collaborative negotiation, taking one or more actions to perform under the executed flexible trade contract, as was discussed above in Claims 1, 15, 29, 45, 63, and 78.

Claim 94: Schmidt / Herz / Maes / Shepherd disclose a method of supply chain activity optimization involving multiple enterprises at a buyer computer system, comprising:

accessing a forecasted demand for at least one item;

automatically and without user input subsequent to accessing the forecasted demand, generating one or more proposed flexible trade contracts using the forecasted demand for the item; automatically and without user input subsequent to generating the proposed flexible trade contracts, communicating each proposed flexible trade contract to a seller computer system to initiate an automatic collaborative negotiation over the proposed flexible trade contract with the seller computer system;

automatically and without user input subsequent to communicating the proposed flexible trade contract, as part of the automatic collaborative negotiation, receiving at least one modification of the proposed flexible trade contract from the seller computer system for automatic evaluation and possible acceptance in response to communicating the proposed flexible trade contract; automatically and without user input subsequent to receiving the modification of the proposed flexible trade contract from the seller computer system, as part of the automatic collaborative negotiation, evaluating the modification to determine whether the first modification is acceptable; automatically and without user input subsequent to evaluating the modification of the proposed flexible trade contract, as part of the automatic collaborative negotiation, generating a first counter-modification to the modification if the modification is not acceptable;

automatically and without user input subsequent to generating the first counter modification to the modification, as part of the automatic collaborative negotiation, communicating the first counter-modification to the seller computer system for automatic evaluation and possible acceptance;

automatically and without user input subsequent to communicating the first counter modification, as part of the automatic collaborative negotiation, receiving at least one second counter-modification of the proposed flexible trade contract from the seller computer system for automatic evaluation and possible acceptance in response to communicating the first counter modification; automatically and without user input subsequent to receiving the second counter modification of the proposed flexible trade contract from the seller computer system, as part of the automatic collaborative negotiation, evaluating the second counter-modification to determine whether the second counter-modification is acceptable;

as part of the automatic collaborative negotiation, communicating with the seller computer system in a series of rounds in which the buyer computer system and the seller computer system successively propose one or more further counter-modifications of the proposed flexible trade contract for automatic evaluation and possible acceptance to create a flexible trade contract based on the proposed flexible trade contract; and subsequent to execution of the flexible trade contract created based on the proposed flexible trade contract as a result of the automatic collaborative negotiation, taking one or more actions to perform under the executed flexible trade contract, as was discussed above in Claims 1, 15, 29, 45, 63, and 78.

Response to Arguments

Applicant's arguments filed June 17, 2005 have been fully considered but they are not persuasive.

In particular, and respect to Claim 1 the Applicant argued:

"Schmidt has nothing to do with amended independent claim 1 regarding a method of supply chain activity optimization involving multiple enterprises at a buyer and seller computer. Rather Schmidt discloses a vendor-managed replenishment contract."

The Examiner refutes the argument made by the Applicant and draws the attention to Schmidt page 3, line 28 – page 4, line 8. In particular the system "will reconcile the demand and supply" this is done by evaluation or *negotiation* of the inputs. In addition, the system will allow "scenarios" and "forecasts" these object will be used by a "decision support system."

The Applicant additionally argued, "Herz fails to disclose... limitations recited by... claim 1. Herz merely describes a unilateral passive filter mechanism..."

The Examiner refutes the argument made by the Applicant and draws the attention to Herz column 61, line 18-49, in particular “automatically take certain actions, such as placing buy or sell orders” and “without the user having to monitor the stock market activity.” The examiner additionally argues that in Herz “automatically taking certain actions” is a type of communication. The Examiner would like to additionally point out that that pure “automation” or a know process does not make it patentable (see *in re Venner*).

The Applicant additionally argued, “Maes has nothing to do with Claim 1.... Merely describes a buying agent to automate several of the time-consuming tasks associated with ordering supplies for a company.”

The Examiner refutes the argument made by the Applicant and draws the attention to Maes (page 82) “Buying agents **automatically collect** (*generate and communicate proposed contract*) information on vendors and precuts that may fit the needs of a company, evaluate the various offerings, make a decision on which merchants and products to investigate, **negotiate** (*receiving and evaluating modifications*) the terms of transactions with these merchants, and finally **place orders** (*accepting*) and make automated payments.”

“The Applicants further submit that these purported advantages relied on by the Examiner of reducing the cost of the procurement units and reducing the time needed to obtain the items are nowhere disclosed, taught, or suggested in Schmidt, Herz, Maes, and Shepherd either individually or in combination.”

The Examiner refutes this argument by the Applicant and respectively re-points to Hertz column 1 line 44-46. Hertz identifies the problem that the patent is address is to “enable a user to access information of relevance and interest to the user without requiring the user to expend an excessive amount of time and energy”

In addition, Maes direct says (page 81): “Software agent technologies can be used to automate several of the most time-consuming stages of the buying process.”

Contact Details

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kirsten S. Apple whose telephone number is 571.272.5588. The examiner can normally be reached on Monday - Friday 7:30-6:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Sam Sough can be reached on 571.272.6799. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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